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5                   UNITED STATES DISTRICT COURT  
6                   WESTERN DISTRICT OF WASHINGTON  
7                   AT TACOMA

8 PFC PROPERTIES, INC., a Washington for-  
9 profit corporation; CHARLES FERNER, a  
10 married individual and officer of PFC  
Properties, Inc., and his spouse; KIMBERLEE  
11 FERNER; and PAUL HALL, an individual and  
officer of PFC Properties, Inc.;

12                   Plaintiffs,

13                   vs.

14 AMTRUST NORTH AMERICA, dba,  
15 SECURITY NATIONAL INSURANCE  
COMPANY, an insurance company; and  
CLEAR SPRINGS PROPERTY AND  
CASUALTY COMPANY, an insurance  
company,

16                   Defendants.

17                   No. 3:22-cv-5022

18                   **DEFENDANT CLEAR SPRING  
PROPERTY AND CASUALTY  
COMPANY'S NOTICE OF REMOVAL  
OF CIVIL ACTION PURSUANT TO 28  
U.S.C. §1441(A)**

19                   **(REMOVED FROM THURSTON  
COUNTY SUPERIOR COURT CAUSE  
NO.: 21-2-02067-34)**

20                   **TO:** Clerk, U.S. District Court, Western District of Washington, at Tacoma;  
21                   **AND TO:** Jeremy D. Dobbins and Joseph Scuderi, Plaintiffs' Counsel; Michael Guadagno,  
22                   Counsel for AmTrust North America.

23                   Please take Notice that Defendant Clear Spring (incorrectly named as "Clear Springs")  
Property and Casualty Company ("Clear Spring"), hereby removes to this Court the state court  
action described below on the grounds stated herein and as supported by the Declaration of Ryan

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1 J. Hesselgesser and the exhibits attached thereto. This Removal is filed with the knowledge and  
2 consent of all Defendants that have appeared or otherwise answered in this matter. Declaration of  
3 Ryan Hesselgesser, **Exhibit 6**.

4 **I. INTRODUCTION AND STATEMENT OF FACTS**

5 On or about December 9, 2021, Plaintiffs commenced a lawsuit in Thurston County  
6 Superior Court titled *PFC PROPERTIES, Inc. et al. v. AmTrust North America, dba, Security*  
7 *National Insurance Company, et al.* (Decl. of Ryan J. Hesselgesser, **Exhibit 1**, Summons and  
8 Complaint). Service on Clear Spring was accomplished through the Office of the Insurance  
9 Commissioner on December 13, 2021 and Clear Spring received notice of this action thereafter.  
10 Plaintiffs' lawsuit seeks to recover defense and indemnity benefits under a policy issued by Clear  
11 Spring. Plaintiff also alleges damages from bad faith and Insurance Fair Conduct Act violations.

12 **II. BASIS FOR REMOVAL**

13 **A. There Is Complete Diversity of Citizenship Under 28 U.S.C. §1332**

14 This case is a civil action for which this Court has original jurisdiction under 28 U.S.C.  
15 §1332(a)(1) and is one which can be removed to this Court by Defendants under 28 U.S.C.  
16 §1441(a) and (b) because it is a civil action between citizens of different states and the amount in  
17 controversy based upon Plaintiffs' causes of action and damages described exceeds \$75,000.00.

18 Plaintiff PCF Properties, Inc., is a Washington for-profit corporation with its principal  
19 place of business in Washington. (Decl. of Ryan J. Hesselgesser, **Exhibit 1**, Complaint, ¶1.1.)  
20 Upon information and belief Plaintiffs Charles Ferner and Kimberlee Ferner are Washington  
21 residents. **Exhibit 2**, Underlying Complaint ¶1.4. Plaintiff Paul Hall is a resident of Washington.  
22 Decl. of Ryan J. Hesselgesser, **Exhibit 2**, Underlying Complaint ¶1.5.

23 Upon information and belief, Defendant Amtrust North America, dba, Security National

1 Insurance Company is a Delaware corporation with its principal place of business New York, New  
2 York and its Operations Headquarters in Cleveland, Ohio. Declaration of Ryan Hesselgesser, ¶ 8.

3 Defendant Clear Spring Property and Casualty Company is incorporated in the state of  
4 Texas with its principal place of business in Illinois. Declaration of Ryan Hesselgesser ¶ 9.

5 The controversy exists, therefore, wholly between citizens of different states. *See* 28  
6 U.S.C. §1332(a)(1).

7 **B. The Amount In Controversy Exceeds the Jurisdictional Minimum**

8 The Complaint does not specify an amount in controversy. Pursuant to Local Rule W.D.  
9 Wash. 101(a), counsel for Clear Spring has a good faith belief that Plaintiffs seek damages in  
10 excess of the jurisdictional amount in this Court. Where the amount in controversy is not clear  
11 from the Complaint, the defendant may verify satisfaction of the requirement by establishing by a  
12 preponderance of evidence that the amount in controversy requirement has been satisfied. *Lim v.*  
13 *National General Ins. Co.*, C15-383RSL, 2015 WL 12025326, at \*1 (W.D. Wash. Apr. 30, 2015),  
14 *citing, Sanchez v. Monumental Life Ins. Co.*, 102 F. 3d 398, 403-04 (9th Cir. 1996). A defendant  
15 can meet this burden by presenting “summary-judgment-type evidence” relevant to the amount in  
16 controversy at the time of removal. *Lim*, 2015 WL 12025326, at \*1, *citing, Koske v. U.S. Bank*  
17 *Corp.* 432 F. 2d 976, 980 (9th Cir. 2005). Pursuant to Ninth Circuit authority, including that of  
18 Western Washington District Courts, attorney’s fees and treble damages sought in the litigation  
19 are included in determining whether the requisite \$75,000 amount in controversy requirement of  
20 28 U.S.C. §1332 has been satisfied. *Lim, supra; Koske, supra.*

21 The underlying action against PFC Properties, alleges amounts in excess of \$12,000 and  
22 alleges that the underlying Plaintiffs spent in excess of \$16,000 on materials and in excess of  
23 \$9,600 on labor for the construction project at issue. **Exhibit 2**, Underlying Complaint, at ¶3.5,

1 3.12, 4.5. The combined amount of only the labor and materials and not including any alleged  
2 resulting damage exceeds \$25,000. PFC Plaintiffs here seek indemnity for those amounts as well  
3 as attorney fees and expert costs expended in defense of the underlying action. Plaintiffs have also  
4 asserted an IFCA claim which they contend would treble these amounts. Plaintiffs also seek  
5 recovery of attorney fees incurred in having to bring this action. The trebling of only the alleged  
6 materials and labor damages in the underlying action, which PFC now seeks, would exceed  
7 \$75,000. Adding defense fees in the underlying action and attorney fees in this action, as well as  
8 any additional damages sought in the underlying action, puts the amount in controversy clearly  
9 over the \$75,000 jurisdictional threshold.

10 **C. This Notice of Removal Is Timely Under 28 U.S.C. §1446(b)**

11 This Notice of Removal is timely under 28 U.S.C. §1446(b) because it is being filed  
12 “...within thirty days after receipt by the defendant, through service or otherwise, of a copy of ...  
13 other paper from which it may first be ascertained that the case is one which is or has become  
14 removable...” 28 U.S.C. §1446(b). Service on Clear Spring was accomplished on the Office of  
15 the Insurance Commissioner on December 13, 2021 and Clear Spring received notice of this action  
16 soon thereafter. Declaration of Hesselgesser, **Exhibit 3**, Certificate from OIC. Therefore, this  
17 Notice of Removal is timely, as it was filed within thirty days of receipt of the complaint at least  
18 by the insurance commissioner and certainly within thirty days of receipt by Clear Spring.

19 Additionally, Security National has just recently appeared or otherwise answered in the  
20 state court action. Declaration of Hesselgesser, **Exhibit 4**, Docket. Counsel for AmTrust and  
21 Security National has consented to removal. Declaration of Hesselgesser, **Exhibit 6**, Email from  
22 counsel.

23 **D. This Notice of Removal Complies with the Applicable Local Rules and Venue Is**

Defendant Clear Spring Property and Casualty Company’s Notice  
of Removal of Civil Action Pursuant to 28 U.S.C. §1441(A) – 4  
Case No.: 3:22-cv-5022

3133627 / 1254.0002

**FORSBERG & UMLAUF, P.S.**  
ATTORNEYS AT LAW  
901 FIFTH AVENUE • SUITE 1400  
SEATTLE, WASHINGTON 98164  
(206) 689-8500 • (206) 689-8501 FAX

**Proper in the Western District of Washington Under 28 U.S.C. §128(a)**

This Notice of Removal complies with all applicable Federal Rules of Civil Procedure and Local Rules. Clear Spring has attached to this Declaration of Ryan J. Hesselgesser, filed in support of this Notice, copies of all process, pleadings, and orders served upon it in the state court action, as required by 28 U.S.C. §1446. Venue is proper in this District pursuant to 28 U.S.C. §§128(b) and 1391, because this District encompasses Thurston County, the county listed in the state court where the Complaint was filed.

Clear Spring is serving Plaintiffs with copies of this Notice of Removal and the supporting Declaration of Ryan J. Hesselgesser (with exhibits).

Clear Spring is also promptly filing with the Clerk of Thurston County Superior Court of the State of Washington a copy of this Notice of Removal, along with a notice to Superior Court of filing the Notice of Removal. Clear Spring respectfully submits that removal of this case to the United States District Court for the Western District of Washington is proper.

DATED this 12<sup>th</sup> day of January, 2022.

s/ Ryan J. Hesselgesser  
Ryan J. Hesselgesser, WSBA #40720  
Forsberg & Umlauf, P.S.  
901 Fifth Avenue, Suite 1400  
Seattle, WA 98164  
Phone: (206) 689-8500  
Email: *RHesselgesser@foum.law*

*Attorneys for Defendant Clear Spring Property and Casualty Company*

## CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the foregoing DEFENDANT CLEAR SPRING PROPERTY AND CASUALTY COMPANY'S NOTICE OF REMOVAL OF CIVIL ACTION PURSUANT TO 28 U.S.C. §1441(A) on the following individuals in the manner indicated:

Mr. Joseph Scuderi  
Scuderi Law Offices, P.S.  
924 Capitol Way S.  
Olympia, WA 98501  
Office: 360-534-9183  
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(X) Via ECF

Mr. Jeremy D. Dobbins  
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Mr. Michael Guadagno  
Bullivant Houser Bailey, PC  
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Seattle, WA 98104  
Office: 206-292-8930  
Email: [michael.guadagno@bullivant.com](mailto:michael.guadagno@bullivant.com)  
(X) Via ECF

**SIGNED** this 12<sup>th</sup> day of January, 2022, at Seattle, Washington.

s/ Shanta D. Jones  
Shanta D. Jones